79-6261

IN THE SUPREME COURT OF THE UNTIED STATES

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~~BAYSHORE ALERT - YES COMMITTEE~~,
JOEL JAFFER, ~~Chairman,~~

~~STATE OF FLORIDA,~~
~~Ex-rel JOEL JAFFER,~~

Appellants,

-vs-

CASE NO. _____

CITY OF MIAMI, etc.;
JAMES G. ROBERTSON;
HOLYWELL, INC.;
LONGVIEW, INC.;

RICHARD P. BRINKER;
RALPH G. ONGIE; etc.;

Appellees.

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STATEMENT ON JURISDICTION

APPEAL from the Supreme Court of Florida
Final Order of Dismissal

Submitted By:

Joel Jaffer, Pro Se
B.A.Y. chairman
2479 SW 13 St.
Miami, Fla. 33145
Tel. (305) 643-1764

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Motion to Proceed in Forma Pauperis

Appellants move to proceed in forma paperis pursuant to Rule 53:

1. The appellants are unable to pay the filing fee and other costs of this action or to give security therefor. Joel Jaffer is unemployed, owns no land or assets which to utilize.

2. Appellants bring this appeal in good faith, have presented the questions presented thereby, and believe appellants are entitled to redress in this court.

3. Appellants hereby affirm that all facts averred in their statement on jurisdiction are ture and correct.

I, Joel Jaffer, do hereby affirm to and verify the foregoing as true attestation of same, and do hereby execute this affidavit in testimony thereof, this 1st day of February, 1980.

Signed, Joel Jaffer

Motion to Sever Service

Appellants hereby move to sever all appellees from service of responsive pleadings, etc., inclusive, except the Miami City Attorney, Florida Attorney General, Jack R. Rice, Jr., Paul A. Buck, Esqs.; and Mr. Sus Ifthidicus, upon application; on the grounds that other attorneys have not filed pleadings heretofore, and have no interest in the outcome hereof, save Alan H. Bruckner; and that appellant cannot afford duplicitidicus correspondence.

Motion to Extend Time for Filing Appendix

Appellants' appendix is near 200 pages, they cannot at present afford the same to be reproduced. Appellants wish leave of court for time to prepare the appendix, or, for leave of court to send originals for the court to reproduce.

Signed, Joel Jaffer, Pro Se

Nature of the Proceedings Below

Appeals of and challenges to Florida's insolvency provisions for court costs and filing fees were dismissed from the Florida Supreme Court for failure to pay its filing fees.

Judgements

The final judgement of dismissal was entered on January 3rd, 1980, "subject to reinstatement should the filing fee be received in this office before January 11, 1980" .

A motion for rehearing and/or clarification was mailed January 15, 1980, received January 17, 1980, and returned unfiled on January 18, 1980, because, "Petition for reinstatement (or rehearing) would only be accepted if the filing fee was recieved (sic) in this Court by January 11, 1980. "

Notice of appeal was mailed to the Florida Supreme Court via U.S. Post Office registered mail on January 31, 1980.

Statute conferring Jurisdiction

Jurisdiction is vested in this court under and by reason of Title 28, United States Code, sections 1257 and 2104, and Art.III, s.2, Art. IV,s.2, Art. VI, and Amendments V and XIV of and to the United States Constitution.

Cases Sustaining Jurisdiction

Violations of State due process requirements are repugnant to the Federal Constitution as well. Central Savings Bank v. New York, 18 N.E.2d 151, Hallinger v. Davis, 146 U.S. 314.

The U.S. Supreme Court will investigate and protect persons under the 14th amendment, Payne v. Arkansas, 356 U.S. 560, when justicealbe controversies arise thereover, Baker V. Carr, 369 U.S. 186.

Due process essentially means that persons whose rights must be determined by a judicial tribunal be given adequate opportunity to be heard. Boddie v. Connecticut, 401 U.S. 371 . Due process demands a hearing before dismissal. Trustees of Dartmouth v. Woodward, 17 U.S. 518.

Due process will enforce the fundamental principles of justice, Holden v. Hardy, 169 U.S. 366, and the administration thereof, Dent v. West Virginia, 129 U.S. 114. The main purpose of due process is to delimit powers of state, Re Gault, 387 U.S. 1. It affords persons at least their protection under the English Crown, Ingraham v. Wright, 430 U.S. 651.

A valid law may be unconstitutionally applied when it interferes with an exercise of rights. Boddie, supra, such as litigation, albeit vigorous, NAACP v. Button, 371 U.S. 415.

Likewise, classifications which invade fundamental rights being asserted under equal protection clase will be closely scrutinized. Harper v. Va.Bd. of Elections, 383 U.S. 663.

Appeal is necessary to the exercise of any fundamental right. Chambers v. Florida, 309 U.S.227, Gideon v. Wainwright, 372 U.S 335.

Constitutional test of statute is a fundamental right. Cohens v. Va., 6 Wheat. 264, 378

Statute in Question

Chapter 57,081, Florida Statutes. Page 234-5, 1977 Florida statutes

"57.081 Costs; right to proceed where prepayment of COSts waived. -

(1) Insolvent and poverty-stricken persons having actionable claims or demands shall receive the services of the courts, sheriffs, and clerks of the county in which they reside without charge. No prepayment of costs to any judge, clerk, or sheriff in the county is required in any action when the party has obtained a certification of insolvency from the clerk in each action, based on affidavits filed with him that the applicant is insolvent and unable to apy the charges otherwise payable by law to any of such officers. The affidavits shall be supported by a written certificate signed by a member of the bar of the county that he has made an investigation to ascertain the truth of applicant's affidavit and that he believes it to be true; that he has investigated the nature of plaintiff's claim and that in his opinion it is meritorious as a matter of law; and that he has not been paid or promised payment of any remuneration for his service and intends to act as attorney for applicant without compensation. On the failure or refusal of the clerk to issue a certificate of insolvency, applicant is entitled to a review of his application for the certificate by the court having jurisdiction of the cause of action.

(2) Any sheriff who, in complying with the terms of this section, expends his personal funds for automotive fuel or ordinary carfare in serving the process of those qualifying under this section may requisition the board of county commissioners of thecounty for the actual expense, and on the submission to the board of county commissioners of appropriate proff of any such expenditure, the board of county commissioners shall pay the amount of the actaul expense from the general fund of the county to the requisitioning officer.

(3) If Plaintiff recovers in the action, costs shall be taxed in his favor as provided by law and when collected, shall be applied to pay costs which otherwise would have been required and which have not been paid.

Rule 9.430, Florida Rules of Appellate Procedure, March 1,1978,p.30.

RULE 9.430. Proceddings by Indigents.

A party who has the right to seek review without prepayment of costs shall file a motion in the lower tribunal, with an affidavit showing his inability to pay fees and costs or to give security therefor. If the motion is granted, the party may proceed without further application to the court and without prepayment of fees or costs in either the lower tribunal or the court or the giving of security therefor. If the motion is denied, the lower tribunal shall state in writing the reasons therefor. Review shall be by motion filed in the court.

Questions Presented

Does Ch, 57.081, Florida Statutes invidiously discriminate against insolvent persons unwilling or unable to secure free legal assistance by requiring a certificate of counsel that such person is in fact insolvent, has a meritorious claim, and will receive legal service free of charge in order to file a civil lawsuit or otherwise receive service of the court by law

Does Ch. 57.081 on its face deny insolvent persons of their fundamental rights by requiring them to appeal a clerk's decision adverse to their insolvency to the court of jurisdiction overtheir claim, when said review requires filing fees, without due process of law?

When Appellants were dismissed from courtbelow because they had not paid a filing fee, and were denied leave to seek review without prepayment of costs in the court below, and appealed both of those orders to the State Supreme Court on grounds of un-constitutional violations of access to the courts, due process, and equal protection, did the State Supreme Court violate,and otherwise misapply its rules in a way repugnant to, those same Constitutional guarantees by dismissing the appeals for lack of payment of the filing fee?

Once established in a court below, did the Florida courts violate Appellants' substantive rights to appeal by dismissing their appeals because of lack of payment of appellate court fees?

When merits of Appellants' appeal concern constitutionality of filing fee and dimissal procedures for indigents in Florida Courts, did the State Supreme Court deny appellants their right to adjudication of constitutional question without due process of law by dismissing their appeals for want of fees, without hearing, briefs or other procedural due process requirements of the appellate process?

Nature of Proceeding Below

The Bayshore Alert : YES (B.A.Y.) Committee, and Joel Jaffer, its chairman and hopeful class representative, had these five causes dismissed from the District Court of Appeals of Florida, Third District, because of their failure to produce the fees normally required for that court ($50) by state law.

They had paid the fee in one case, numbered 57,898 in the Florida Supreme Court, which was the first to be appealed. The case was dismissed on other grounds, however, from the said District Court.

All six cases were then appealed to the Supreme Court of Florida, the court of last resort in that State. Two of the cases (with Appellees Richard P. Brinker, Clerk, Circuit Court, and Holywell, Inc.) were simultaneously appealed to the Supreme Court of Florida directly from that state's circuit courts.

Pursuant to Florida Court rules, Appellants moved for a waiver of costs on appeal to the State Supreme Court in all of the lower courts. The requests, which prayed for relief from a denial of state rights of access to the courts and due process, and Federal rights of equal protection, were denied in four cases and not ruled upon in the other two. Appellants then appealed those four denials to the State Supreme Court as well.

The notices of appeal and Appellants' briefs, and briefs on jurisdiction were, in time, all duly and timely filed in the said Florida Supreme Court. The briefs cited pleadings below and authority to the effect that the appellants' causes should

not have been dismissed below because of their apparent failure to file the fees.(These arguments will appear later.)

The Clerk of the Florida Supreme Court recieved all of the pleadings, but sent Mr. Jaffer notices on all of the receipts that the appeals "would not be considered" until the $75 filing fee for that court was paid to that Clerk.

At this point, all of the Appellees moved to stay the requirement for their answer briefs on jurisdiction, or answer briefs, where applicable, until the filing fees were paid. These motions were granted.

Then, the Appellees moved to dismiss four of the appeals (no relation to the previously mentioned four), on the grounds that the filing fees had not been paid.

The Appellants answered that such a motion went to the merits of the appeals, and to the jurisdiction of the court, and that, thus, /the appeals/ could not be dismissed for this reason. The Court apperently agreed and notified the parties that the motions to dismiss would be considered at the time jurisdiction would be considered.

Appellants now moved to proceed in forma pauperis, citing, inter alia, the contents of their briefs on jurisdiction, and various constitutional guarantees which the insolvency statute provisions and court rules had, under the circumstances, violated.

Finally, the State supreme Court dismissed all of the appeals, subject to reinstatement if the filing fees were paid before January 11,1980, which was not done. A rehearing was refused and returned to Mr. Jaffer.

Rule 9.040(h), Florida Rules of Appellate Procedure, Mar.1,1978,p.10

> Rule 9.040 General Provisions
> (h) Non-Jurisdictional Matters. Failure of a clerk or a party timely to file fees or additional copies of notices or petitions shall not be jurisdictional; provided that such failure may be the subject of appropriate sanction.

How Constitutional Questions were Raised

For further clarification of these issues, we now look at each case on appeal separately. Heretofore they were consolidated for the jurisdictional statement pursuant to Sup.Ct. Rule 15(3).

* Jaffer v. Brinker, Fla.Sup.Ct. Nos. 57,898 and 58,111.

This is perhaps the case where the Constitutional issues are the most blaring. The case was originally filed in the Circuit Court under the insolvency provisions of Ch. 57.081, Florida Statutes, because the Defendant(Respondent) Clerk of the Circuit Court Brinker refused to give Mr. Jaffer an Affidavit of Insolvency even though Mr. Jaffer had presented an affidavit and certificate pursuant to that statute.

The Petition for Writ of Mandammus was dismissed in the Circuit Court August 14,1979. Appeal was taken to both the Florida Supreme Court and District Court of Appeals, Third District as a matter of right. In a motion to transfer the appeal from the District to the Supreme Court, Mr. Jaffer stated:

> "This appeal initially and directly passes upon the validity of Chapter 57.081, Florida Statutes, i.e. that section which prescribes that appeals of the decision of the Clerk shall be made in the jurisdiction in which such certificate is sought/ "

The motion was denied by the District Court October 17,1979.

Mr. Jaffer then moved to waive appeal costs in the

Circuit court-lower tribunal. In doing so he plead:

> " Said statute prescribes that only one such affidavit per case shall be filed, and dispenses with the necessity of duplicate filings for an appeal. * * *
> Because this cause of action involves the propriety of F.S. 57.081 and Rule 9.430, a denial of review of those laws by this court because of said laws is to deny the Petitioner due process, separation of powers, right to appeal, and access to courts guaranteed him by the Florida and U.S. Constitution.
> The relief requested is necessary to the prosecution of this appeal and Petitioner has no other adequate or speedy remedy at law save this motion. "

This motion, made on Sept. 24, 1979 was denied by the Circuit Court October 1,1979 giving no reasons therefor. Mr. Jaffer amended his notices of appeal to include that order of denial.

By now needless to say, the District Court dismissed the appeal on October 30,1979 because the filing fee was not paid. Mr. Jaffer filed notice of appeal of that decision to the Florida Supreme Court on November 11,1979. He moved for consolidation in the latter court with the other cases now before this court, becaus

> "The appeal directly passes upon the validity of F.S.57.081 and also construes Article I,s.21, Florida Constitution, as well as certain provisions in the Federal Constituttion;"

The motion to consolidate was denied October 18,1979, although the high Florida court said that the "cases will travel together for consideration by the Court at the same time". (referring to the appeal from the Circuit Court)

In receiving the new appeal from the District Court, the Florida Supreme Court sent the following notice Nov.20,1979:

> " $75 Filing fee not received. This case will not be considered by the Court until said fee is received or a Notice of Insolvency is filed by the Appellant."

Mr. Jaffer did the latter option, and filed a Motion to Proceed In Forma Pauperis which read in part as follows:

> "That in an action to determine one's insolvency, the said person cannot be expected to pay court costs for

the review of such action mandated in Ch. 57.081,F.S.A. Similarly, the actions of the lower courts here reflect the burdensome nature of court fees in order to secure relief in Florida. The Circuit Court did not rule that the Appellant wasn't entitled to indignet relief, but instead refused to rule. The Appellant was forced to petition the district court for a writ of mandammus to compel the lower court to rule, for which he could not pay the fee, etc., etc. The Circuit Court still refused to rule on the petition by dismissing it. * * *

the Appellant has argued in many briefs on jurisdiction before this court in support of his right to so proceed, specifically Case Nos. 57,800, 57,784; and that said arguments are incorporated herein by reference.

That the common law of England provided for court-sanctioned proceedings in forma pauperis,(as opposed to legislated provisions) and that this court is well within its constitutional mandate and limits to grant such leave. Boddie v. Connecticut, 401U.S. 371.

That denial of this motion would be to deny the Appellant the equal protection of the laws that secure his civil rights of access to the courts for redress of grievances.

That the administrative quagmire produced by this action is not the entire fault of your Appellant; that he has proceeded in good faith by instituting an action once and for all to determine his insolvency; and that statutory and other deficiencies in the Courts of Florida have produced conflicting and circuiticious procedures that should be resolved of right in this Court."

* B.A.Y. v. Holywell, Fla.Sup.Ct. No. 57,944

The other major issue raised by the actions of the Florida Supreme Court is typified by an examination of the pleadings in this case, to wit: Dismissal replacing adjudication on the merits.

The Appellee Holywell moved to dismiss the appeal because the fee had not been paid, and because, supposedly, a motion to proceed in forma pauperis was not the proper way to proceed. On October 31,1979, Appellants answered as follows:

"That his appeal has for its issue the propriety of the dismissal procedures for indigents in the Florida Courts, and that thus the Respondents have plead to the merits of the appeal in order to have it dismissed.

That the respondents are attempting to circumvent movants' access to the courts and rights of appeal by claiming that an appeal of an order which was allegedly frivolous is itself frivolous.

That extensive argument upon these points is contained in Appellants' Brief on Jurisdiction, duly and timely filed and served herein, where of necessity said arguments should reside, and that Respondents should of necessity plead their arguments in an Answer Brief thereto.

That, likewise, argument leaning towards the proposition that Respondents should have filed an answer brief rather than a motion to dismiss is also contained in said Appellants' Brief on Jurisdiction, which said argument is hereby incorporated and adopted herein and hereto by reference. * * *

That thiscourt has a responsibility given it by the Florida Constitution to proceed with this cause until final adjudication on the merits.

That to movants' knowledge, F.S. 57.081 does not apply to the Clerk of the Supreme Court, and that provisions of Ch. 35,F.S.A. which prescribe payment of a filing fee without provisions for indigents (were this court so to rule) are hereby submitted as unconstitutional * * * "

On October 29,1979, the Florida Supreme Court ruled:

"Motion to Dismiss and Motion to Dismiss and Strike Notice to Invoke Certiorari Jurisdiction of the Supreme Court of Florida will be considered at the time the Court determines jurisdiction."

*** Several of the pleadings below involve numerous cases simultaneously.

On October 31,1979, Appellants filed an Answer to Motions to Dismiss, and also a motion for rehearing of the Supreme Court' Order granting a stay of filing of answer briefs on jurisdiction until after the fee was paid. It said, inter alia,

" * * * they are trying to try the issues of the Court's jurisdiction without the benefit of a proper trial, they have acted contrary to the expressed intent and stipulations of their Motion to Stay, and are attempting to avoid proper consideration of this appeal. "

In a pleading in support of their Motion to Proceed in forma pauperis, Appellants plead:

"Appeal in an d of itself is a protected right against invidious discrimination based on wealth. Dowd v. U.S., 340 U.S. 206, Griffin v. Illinois, 351 U.S. 12, Boddie, supra."

Substantial questions

These cases involve the fundamental rights of the Appellants which invoke due process requirements. Although only the case against Richard P. Brinker directly contests the insolvency statute, the other cases encountered similar impediments in the process of appeal and error through the Florida Courts.

The Lanyview, Inc. and City of Miami-Robertson cases were actions to review certain zoning decisions of the City of Miami. That City's zoning code prescribes that appeal of such actions may be had only through the state circuit courts. Homeowner actions involve fundamental property rights within the meaning of the fourteenth amendment, to the extent that they may be maintained as class actions. Mags Transportation System, Inc. v. City of Miami Beach, 1956, 88 So.2d 751.

Moreover, the actions had as their root cause certain determinations of dedications of rights-of-way within private subdivisions, which were claims inherent to the courts in their authority over titles to lands within their jurisdiction. Grannis v. Ordean, 234 U.S. 374.

The Robertson (solo) action was a common-law action for conversion, said common-law being adopted to Florida Law prior to the State's constitutional guarantees of access to the courts, Kluger v. White, 281 So.2d 1, and being determinative of that latter right.

The Hollywell case started as an appeal of right pursuant to State zoning law, similar to that aforesaid,

but evolved into a constitutional test of a new development statute as being violative of the Florida Separation of Powers doctrine.

Finally, the Gayle case was one to protect the rights of a hopeful candidate to get on the ballot, such rights long ago equated to sovereign rights of the people and realized as fundamental by this court. Baker v. Carr, 369 U.S. 186, Jackson v. Ogilvie, 325 F.Supp. 864.

In general, access to the courts is a fundamental right within the scope of the due process provision. Boddie, (concurring opinion of J. Douglas), supra, DeWitt v. Paul, 366 F.2d 632

Appeal of cases involving fundamental rights is most definitely within the clause. Chambers v. Florida, 309 U.S. 227, Burns v. Ohio, 360 U.S. 252.

When thus called upon in the aid of life, liberty and property, we can see that Ch. 57.081 on its face, and as applied with other Court rules, not only deprive insolvent persons of a hearing and/a day in court, but invidiously do so because of wealth alone.

On examination of the statute, it appears that Appellants were lucky to get in court at all. If the Clerk denies a certificate of insolvency, how can a party get review in any court? And this is not taking into account the discriminations against persons who cannot secure free legal services.

And, as here applied the statutes totally deny Appellants' resort to the courts, by dismissing their appeal of a dismissal because of a lack of court fees, a non-jurisdiction defect. Davis v. Setzer's Super Stores, 145 So.2d 893.

The question is substantial. Griffin v. Washington, 372 U.S. 137

> "Access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." */

In the State of Florida, Rules of Court supersede an inconsistent statute of this type. Jaworski v. Opa-Locka, 149 So.2d 33, 500. Rules of court cannot enlarge or restrict substantive law, Ex Parte Collett, 337 U.S. 55, 69 S.Ct. 944, 93 L.Ed. 1207; Sibbach v. Wilson & Co., 312 U.S. 1, 61 S.Ct. 422, 85 L.Ed. 479; Ex Parte Peterson, 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919; Ex Parte Rule, 5 Wall. 290, 18 L.Ed. 520; Ex Parte Wells, 18 How. 307, 15 L.Ed. 421; Ex Parte Fisk, 113 U.S. 713, 5 S.Ct. 724, 28 L.Ed. 1117; Ex Parte Boyd, 105 U.S. 647, 26 L.Ed. 1200; Ex Parte Robinson, 19 Wall. 505, 22 L.Ed. 205; Ex Parte McCardle, 7 Wall. 506, 19 L.Ed. 264; Ex Parte Yerger, 8 Wall. 85, 19 L.Ed. 332; Wayman v. Southard, 10 Wheat. 1, 6 L.Ed. 253; Supreme Court Rules, 28 U.S.C.A. **/

Most importantly, what the State Supreme Court has here done is to deny appellants a forum and final determination of a justiceable Constitutional controversy. But that is really the only thing that the state supreme court is in existence to do. Cohens v. Virginia, 6 Wheat.(19 U.S.) 264, 373, 5 L.Ed. 257. ***/

Conclusion

The Supreme Court of the United States should take jurisdiction over this justiceable and important Constitutional controversy.

Submitted,

Joel Jaffer, Pro Se
2470 SW 16 St.
Miami, Fla. 33145
Tel. (305) 643-1764

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing statement on jurisdiction was served by U.S. Postal Service, first class postage prepaid, upon Jerry Thornton, Jr., Miami City Attorney, Hon. Jim Smith, Fla. Attorney General, Jack R. Rice, Jr., Esq., and Paul C. Huck, Esq. on this 15th day of February, 1970.

By: Joel Jaffer

*/ Art. I, s.21, Fla. Const.
**/ Art. V, s. 3, Fla. Const.
***/ Art. V,s.(4)(2) Fla. Const.

IN THE SUPREME COURT OF THE UNTIED STATES

JOEL JAFFER,
STATE OF FLORIDA,
Etc.,Etal (Ex-Rel),

Appellants,

-vs-

CITY OF MIAMI,Etc.,
RALPH G. ONGIE,Etc.,
JAMES G. ROBERTSON,
LONGVIEW,INC.,Etc.,
HOLYWELL, INC.,Etc.,
RICHARD P. BRINKER,Etc.,

Appellees.

CASE NO. 79-6261

Florida Supreme Court
Case Nos. 57,784
57,785
57,798
57,799
57,801
57,836
57,888
57,898
57,944
58,111

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SUPREME COURT, U.S.

MOTION TO PROCEED IN FORMA PAUPERIS

Pursuant to Ruel 53 U.S.Supreme Court Rules and Title 28, U.S.C. 1915, Petitioner-Appellant hereby moves to Proceed In Forma Pauperis, and does hereby affirm the following:

1.. The Appellant, Joel Jaffer, in unable to pay filing fees and other costs of this action or to give security therefor. He is unemployed and owns no land or other valuable assets.

2. The Appellant brings this appeal in good faith, has presented viable questions he seeks to review, and believes he is entitled to redress by appeal in this court.

3. The Appellant acknowledges that he is the Board of Directors of the B.A.Y. Committee and that the facts alleged in a "Motion to Represent Class" are affirmed herein as true and correct for the purposes of that motion.

To the above, Joel Jaffer does hereby affirm and verify the foregoing facts as true and correct t o the best of his knowledge and belief and does execute this affidavit under penalty of perjury in testimony thereof pursuant to the laws of the United States,this 11th day of March, 1980 A.D.

Signed, _____
Joel Jaffer

IN THE SUPREME COURT OF THE UNITED STATES

79-6261

CASE NO. _____

Florida Supreme Court
Case Nos. 57,784 57,898
57,785 57,944
57,798 58,111
57,799
57,801
57,836
57,888

JOEL JAFFER, Chmn., B.A.Y. COMMITTEE, etc., et al.,

Appellants,

-versus-

CITY OF MIAMI, etc., et al.,

Appellees,

RECEIVED
MAR 5 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION TO REPRESENT CLASS

COMES NOW Joel Jaffer, Pro Se, Appellant , and moves to represent the class of the Bayshore Alert: Yes committee, an unincorporated association, pursuant to Rule 23.2, Fed.R.Civil.P., and states:

1. That the Bayshore Alert: Yes (B.A.Y.) Committee is an unincorporated association, whose articles and membership are attached hereto as exhibit ".".

2. That the members of the said B.A.Y. committee are too numerous to make a joinder of parties practicable, and that Joel Jaffer can fairly and adequately represent the interests of the B.A.Y. Committee in this cause before this court.

3. That the said members formed and joined in the B.A.Y. Committee to promote and defend a common interest, by association to a greater extent than by themselves individually, and that the claims here appealed are common to the very maintenance of the association's actions below; and that the association is unsolvent and without funds or ability to pay this Court's costs.

4. That the B.A.Y. Committee as a class was dismissed en toto from the Florida Supreme Court, and that the issues here raised are the Committee's right to have their insolvency determined and/or to proceed regardless of the results of or the determination; and, thus, separate or varied adjudication of members of the class would be as a matter of law contrary to their cla

5. That the Appellees City of Miami and Longview, Inc., have sought and received judgment against Joel Jaffer personally, and have thus refused to act on applicable grounds. (Exhibit "B")

WHEREFORE, Joel Jaffer prays that he be designated the class representative of the B.A.Y. Committee and that the latter be allowed to [illegible] and process in forma pauperis.

IN THE ALTERNATIVE, Joel Jaffer demands that he be allowed to appear, and to proceed in forma pauperis with these claims, in that he was a party below and the litigation of his claim before this court will adequately test the claims of co-parties class. Comittee, as per Sosna v. Wickard, 321 U.S. 288.

Respectfully submitted,

Joel Jaffer, Pro Se
Chairman and Board of Directors,
Bayshore Alert : Yes Committee.
2479 SW 13 St.
Miami, Fla. 33145
Tel. (305) 643-1764

I HEREBY CERTIFY that a true copy of the foregoing Motion to Represent Class was this 25th day of February, 1980, mailed via U.S.Postal Service first class postage prepaid to the below-named adressees:

Hon. Jim Smith
Fla. Attorney Gen.
The Capitol
Tallahassee, Fla.32301

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Gus Efthimiou, Esq.
10th floor, DuPont Building
169 E. Flagler, St.
Miami, Fla. 33130

The instrument and certificate executed as true and correct this 25th day of Feb, 1980, BY: Joel Jaffer
Joel Jaffer